

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

MACHIAVELLI FARRAKHAN SIBERIUS,

Plaintiff,

v.

AMERICAN MILITARY UNIVERSITY &
AMERICAN PUBLIC UNIVERSITY
SYSTEMS, PRESSLEY RIDGE, AND
WEST VIRGINIA DEPARTMENT OF
EDUCATION,

Defendants.

CIVIL ACTION NO. 2:18-cv-01125

Wood County Civil Action No.: 18-C-153
(Removed from the Circuit Court of Wood
County)

NOTICE OF REMOVAL

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

PLEASE TAKE NOTICE that Defendants American Military University and American Public University System, Inc. (“AMU” and “APUS,” respectively), pursuant to 28 U.S.C. §§ 1441 and 1446, file this Notice of Removal. The specific grounds for removal are set forth below:

I. SUMMARY OF THE CASE

1. Plaintiff Machiavelli Farrakhan Siberius (hereinafter “Plaintiff”) instituted this action in the Circuit Court of Wood County, West Virginia on or about June 5, 2018, and service of the Summons and Complaint was effected on AMU and APUS on or about June 11, 2018.¹ See Complaint attached hereto as “Exhibit 1.” Thus, this Notice of Removal is timely filed with this Court within thirty (30) days of service of the Complaint, as permitted by 28

¹ Defendant Pressley Ridge was served with the Summons and Complaint on June 8, 2018, and Defendant West Virginia Department of Education was also served with the Summons and Complaint on June 8, 2018.

U.S.C. § 1446(b). Furthermore, no other pleadings have been filed in the Circuit Court. A copy of the state circuit court's docket sheet is attached hereto as "Exhibit 2."

2. In his Complaint, Plaintiff alleges various causes of action including: "negligence, breach of contract, 55-7E-2, and Internship Programs Under the Fair Labor Standards Act." Ex. 1 at ¶ 1.

3. In accordance with the well-pleaded complaint rule, federal question jurisdiction must be apparent from the face of the complaint. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987); Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 9-10 (1983) (citations omitted); McCutcheon v. Valley Rich Dairy, 81 F. Supp.2d 657 (S.D. W.Va. 2000).

4. Plaintiff explicitly alleges that Defendants violated the Fair Labor Standards Act, 29 U.S.C. §§ 201 to 219 ("FLSA"). *See* Ex. 1 at ¶¶ 1, 22, and 23. Thus, he asserts a claim brought under the laws of the United States that is removable pursuant to 28 U.S.C. § 1441.

5. In light of the foregoing, this Court has federal question jurisdiction over Plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331.

6. AMU and APUS request that this Court exercise supplemental jurisdiction over Plaintiff's state law claims, which are completely intertwined with Plaintiff's FLSA claim, under 28 U.S.C. § 1367(a).

7. Pursuant to 28 U.S.C. § 1446(b)(2)(A), Defendants Pressley Ridge and the West Virginia Department of Education consent to the removal of this action. *See* Consents to Removal attached hereto as "Exhibit 3."

8. AMU and APUS will, after the filing of this Notice of Removal, promptly (1) provide written notice thereof to Plaintiff as required by law; (2) file a true and accurate copy of this Notice of Removal with the Clerk of the Circuit Court of Wood County, West Virginia; and (3) request that the Clerk of the Circuit Court of Wood County submit a certified copy of the entire state court record to this court for filing.

9. By removing this action, AMU and APUS reserve their rights to assert all available defenses.

WHEREFORE, the Defendants AMU and APUS request that this action be removed from the Circuit Court of Wood County, West Virginia, to the United States District Court for the Southern District of West Virginia, and that said Circuit Court of Wood County, West Virginia proceed with no further action.

Respectfully submitted this 5th day of July, 2018.

STEPTOE & JOHNSON PLLC
Of Counsel

/s/ Larry J. Rector

Larry J. Rector (WV Bar No. 6418)
Allison B. Williams (WV Bar No. 11329)
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000 (telephone)
(304) 933-8753 (facsimile)

*Counsel for Defendants American Military
University and American Public University
System, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2018, I electronically filed the foregoing “Notice of Removal” with the Clerk of the Court using the CM/ECF System and that I have mailed the document by United States Postal Service to the following non-CM/ECF participants:

Machiavelli Farrakhan Siberius
P.O. Box 1162
Parkersburg, WV 26102
(Certified Mail – Return Receipt Requested)

J. Victor Flanagan, Esquire
PULLIN, FOWLER, FLANAGAN,
BROWN AND POE PLLC
901 Quarrier Street, James Mark Building
Charleston, West Virginia 25301

Joseph Selep, Esquire
ZIMMER KUNZ, PLLC
310 Grant Street, Suite 3000
Pittsburgh, PA 15219

STEPTOE & JOHNSON PLLC
Of Counsel

/s/ Larry J. Rector

Larry J. Rector (WV Bar No. 6418)
Allison B. Williams (WV Bar No. 11329)
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000 (telephone)
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*Counsel for Defendants American Military
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